

Article - Estates and Trusts

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§3–401. NOT IN EFFECT

**** TAKES EFFECT OCTOBER 1, 2020 PER CHAPTER 435 OF 2019 ****

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Augmented estate” means an estate as calculated under § 3–404 of this subtitle.
- (c) “Court” means:
 - (1) Except with respect to a proceeding under § 12–502 of the Courts Article or as otherwise provided under the Maryland Rules, the orphans’ court, or the court exercising the jurisdiction of the orphans’ court, for the county in which the election under § 3–403 of this subtitle is filed; or
 - (2) With respect to the enforcement of payment of an elective share or any portion thereof under § 3–410 of this subtitle, the court having jurisdiction over the property from which the payment is to be made.
- (d) “Estate subject to election” means the portion of an augmented estate that is subject to election as calculated under § 3–404 of this subtitle.
- (e) “Marital trust” means any trust created for the exclusive lifetime benefit of the spouse of a decedent or of the settlor of the trust if:
 - (1) The spouse is entitled to all income from the property held by the trust, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and
 - (2) The spouse has the power to compel the trustees of the trust to convert unproductive assets into income–producing assets.
- (f) “Person responsible for filing the estate tax return” means the person responsible for filing a Maryland estate tax return for a decedent under § 7–305 of the Tax – General Article, regardless of whether a Maryland estate tax return actually is required to be filed for the decedent.
- (g) “Probate estate” means all property passing by testate succession.

(h) “Qualifying joint interest” means an interest in property held as a joint tenant with right of survivorship or equivalent, or a tenancy-by-the-entireties equal to:

(1) In the case of a joint tenancy with right of survivorship or equivalent, the greater of:

(i) The tenant’s fractional interest in the property; or

(ii) The percentage of the property’s value, exclusive of income or appreciation, contributed by the tenant; or

(2) In the case of a tenancy-by-the-entireties, one-half of the value of the property.

(i) (1) “Qualifying lifetime transfer” means:

(i) An irrevocable transfer made during the lifetime of the transferor in which the transferor retained for a period actually terminating at or after the transferor’s death:

1. Possession of the property;

2. The right to receive the income from the property;

3. The use or enjoyment of the property;

4. A qualifying joint interest;

5. A qualifying power of disposition; or

6. The right to receive an annuity or other periodic payment from the property, including, without limitation, a periodic payment based on the value of the property;

(ii) An irrevocable transfer made during the lifetime of the transferor in which the transferor retained an interest described in item (i) of this paragraph that actually terminated before the transferor’s death, and the remaining value of the property transferred then passed to a recipient other than the transferor or the transferor’s spouse; or

(iii) Any other irrevocable transfer made during the lifetime of the transferor, other than a transfer to the transferor’s spouse.

(2) “Qualifying lifetime transfer” does not include a transfer made in accordance with a bona fide sale for adequate consideration in money or money’s worth.

(j) “Qualifying power of disposition” means a power, whether or not the holder has the capacity to exercise that power, by which the holder, during the life of the holder or on the holder’s death, may:

(1) Appoint the property subject to the power to the holder, the holder’s estate, the holder’s creditors, or the creditors of the holder’s estate, unless the power of appointment is not created, directly or indirectly, by the holder and is limited by an ascertainable standard relating to the holder’s health, education, support, or maintenance;

(2) Designate the recipient or recipients of the property on the holder’s death, including in accordance with a beneficiary designation, a payable on death designation, or a transfer on death designation; or

(3) Determine, alter, or amend the possession or enjoyment of, or the right to income from, the property subject to the power if the power was created, directly or indirectly, by the holder.

(k) “Revocable” has the meaning stated in § 14.5–103 of this article.

(l) “Revocable trust of the decedent” means any trust of which a decedent was the settlor that was revocable by the decedent before the decedent’s death or incapacity.

(m) “Settlor” has the meaning stated in § 14.5–103 of this article.

(n) “Spousal benefits” means the aggregate value of property passing to or in trust for the benefit of the surviving spouse by reason of a decedent’s death and property held for the benefit of the surviving spouse in any trust created during a decedent’s lifetime of which the decedent was a settlor, reduced by:

(1) With respect to property that the decedent owned jointly with the surviving spouse, that portion of the value of the property that is not included in the estate subject to election;

(2) The value of assets passing by reason of the decedent’s death to any trust of which the surviving spouse is not the sole beneficiary during the surviving spouse’s lifetime;

(3) The value of assets held in any trust created during the decedent's lifetime of which:

(i) The decedent was a settlor; and

(ii) The surviving spouse is not the sole beneficiary during the surviving spouse's lifetime;

(4) One-quarter of the aggregate value of assets passing by reason of the decedent's death to, or held at the time of the decedent's death in, any marital trust;

(5) One-third of the aggregate value of assets passing by reason of the decedent's death to, or held at the time of the decedent's death in, any trust, whether testamentary or created during the decedent's lifetime:

(i) Excluding a trust described under item (4) of this subsection;

(ii) Of which the decedent was a settlor, if the trust was created during the decedent's lifetime;

(iii) That is held for the exclusive lifetime benefit of the surviving spouse; and

(iv) From which the trustees may make distributions to or for the benefit of the surviving spouse in accordance with a standard not more restrictive than that under § 14-402(b)(3) of this article; and

(6) The entire value of any trust for the exclusive lifetime benefit of the surviving spouse that is not a marital trust and is not described under item (5) of this subsection.

(o) "Value" means:

(1) For an asset included in the gross estate of a decedent under § 7-301(b) of the Tax – General Article, the value of the asset under Title 7, Subtitle 3 of the Tax – General Article, if a Maryland estate tax return is required to be filed with respect to the decedent; and

(2) For any other asset, the value of the asset under § 7-202 of this article, regardless of whether the asset is required to be reported on an inventory.

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